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And Keya Gallery  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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X

PETE LIVINGSTON,

Plaintiff

v.

KEYA MORGAN AND KEYA  
GALLERY,

Defendants,

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X

ELECTRONICALLY FILED

No. 07 CV 7835 (RMB) (KNF)

DECLARATION OF KENNETH R.  
SILVERMAN IN SUPPORT OF  
DEFENDANT KEYA MORGAN  
AND KEYA GALLERY'S  
MOTION TO DISMISS

I, Kenneth R. Silverman, declare:

1. I am the attorney in this action for the defendants Keya Morgan and Keya Gallery. I am licensed to practice law in the United States District Court, Southern District of New York.
  
2. I have personal knowledge of all matters stated herein and, if called as a witness I could competently testify thereto, except as to those matters stated upon information and belief and to those matters I believe them to be true.

3. Attached hereto as Exhibit 1 is a true and correct copy of the search result from the United States Copyright Office for Carl S. Perutz, dated March 20, 2008. I obtained the Copyright search result by printing it from the United States Copyright Office website on March 20, 2008.
4. Attached hereto as Exhibit 2 is a true and correct copy of the book "Marilyn Monroe" by author Janet Jackson. I obtained this copy of the book by downloading it from Pacer, item #100 in the Docket Report of the action Livingston v. Morgan, U.S. District Court, California Northern District, No. 06-CV-02389. I attempted to locate the book by internet search but was unsuccessful.
5. This book was electronically filed by William M. Simpich, Attorney for Plaintiff Pete Livingston in the California Action. Mr. Simpich's Declaration, which is Pacer item # 90 in the Docket Report of the California Action, states he obtained a true and correct copy of the book from defendant Nova Wines, Inc. in the course of discovery.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Executed in Brooklyn, New York April 5, 2008



Kenneth R. Silverman  
Attorney for Defendants Keya Morgan  
and Keya Gallery

# EXHIBIT 1

# Copyright

United States Copyright Office

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## Public Catalog

Copyright Catalog (1978 to present)

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Search Results: Displaying 1 of 2 entries

[Labeled View](#)*Carl S. Perutz photos of Marilyn Monroe.***Type of Work:** Visual Material**Registration Number / Date:** VA0001266038 / 2004-08-03**Title:** Carl S. Perutz photos of Marilyn Monroe.**Description:** Digital contact sheets.**Copyright Claimant:** Pete Livingston**Date of Creation:** 1960**Date of Publication:** 1999-09-21**Authorship on Application:** Carl Perutz, 1921-1981.**Names:** Livingston, PetePerutz, Carl, 1921-1981.[Save, Print and Email \(Help Page\)](#)Select Download Format  Full Record  Format for Print/SaveEnter your email address:  [Help](#) [Search](#) [History](#) [Titles](#) [Start Over](#)[Contact Us](#) | [Request Copies](#) | [Get a Search Estimate](#) | [Frequently Asked Questions \(FAQs\) about Copyright](#) |  
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# EXHIBIT 2

# **MARILYN MONROE**

**by Janet Jackson**

**Published by Cornerstone Press**

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**PRINTED IN THE UNITED STATES OF AMERICA**

## INTRODUCTION

The following 53 photographs of Marilyn Monroe were taken in 1956 by Japanese-born fashion photographer Takashi Oyama, in New York City. We are very grateful to Kathy Smith for bringing them to our attention. Although a few of these photographs have been published in the past, this is the first time that they are being published in their entirety and made available to the public. It is safe to say that there will be something new here for even the most dedicated devotees of Marilyn, even though these photographs were taken approximately 15 years ago. We feel fortunate to be able to share them with you in this publication. We are forever indebted to Mr. Takashi Oyama for not only giving us the permission to publish these splendid photographs, but also for taking the time to share his memories with us.

This grouping of photographs represents an hour of Marilyn's life with a rare glimpse through the photographer's lens, exactly as the artist saw her. Most photographers would never show anyone their less than perfect shots, let alone dare to publish them. Though every single shot may not be considered a perfect portrait at first glance, they give us a candid inside view that allows us to see Marilyn as a real person. We can see she changed hats four times, pinned her hair up in some shots and let it down in others, and she even took two shots without her shirt.

Marilyn Monroe is considered the most photographed female of the 20th century, yet we still can't seem to get enough of her. Even though it would be nearly impossible to count the number of photographs that were taken of her or the amount of sittings that she gave to photographers, each new photograph we encounter is as exciting and refreshing as the first one we saw. There is a radiant quality about her photographs which transcends time and place. Her smile so innocent and sweet, her eyes so vulnerable, her facial expression so tender.

It is hard to believe that it is 10 years since she was taken away from us. At the time of her death she had reached the pinnacle of her career and was a role model for just about every girl under the sun. Her everlasting beauty is captured for all to see through these wonderful photographs.

The following is a Q&A with Takashi Gyama who took these beautiful photographs of Marilyn Monroe.

QUESTION: How did you meet Marilyn Monroe?

ANSWER: I met Ms. Marilyn Monroe through my friend Warren Fischer.

QUESTION: Who was Warren Fischer and what did he do?

ANSWER: Warren Fischer was a very good friend and a good person. He worked on Wall Street and was a stockbroker. I met him at a fashion party in the early 1950s and we became good friends.

QUESTION: What year did you take the photographs of Marilyn Monroe?

ANSWER: 1956

QUESTION: What was the relationship between Marilyn Monroe and Warren Fischer? Do you think they could have been lovers?

ANSWER: I think they were only friends and I would never ask any private questions from him. I do remember that they would have secret meetings every Friday at the St. Regis to have a drink and to talk. I never asked him what they spoke about.

QUESTION: There are rumors that Warren Fischer was being paid by the FBI or the mafia to befriend Marilyn in order to spy

on her. Do you think there is any truth to this?

ANSWER: No, I do not believe that Warren was a FBI agent or isn't one. I have also heard this from other people, but I do not believe it. During World War Two everybody thought that all the Japanese living in the United States were spies but that was obviously not true and it hurt a lot of people. Even if he was a FBI agent, he was a very nice man and would never hurt anyone.

QUESTION: Why do you say that the meetings were secret?

ANSWER: Because Warren never talked about what he was saying to her and she was a big movie star. I was very impressed and excited by the fact that Warren Fischer was friends with Ms. Marilyn Monroe.

QUESTION: How many photographs did you take at that sitting?

ANSWER: 53

QUESTION: Did you ever photograph her again?

ANSWER: No, but Ms. Monroe told me she liked my photographs a lot and that she wanted me to photograph her again. After she married Arthur Miller it got hard for me and Warren to contact her. Mr. Miller was very protective of her.

QUESTION: Where were the photographs taken?

ANSWER: I took the photographs in New York City at a studio I rented.

QUESTION: What was it like to actually meet Marilyn Monroe?

ANSWER: She was very beautiful. She was also very kind, polite and a fun person to be around. I will never forget that day, it was very special. She made me feel like I was a very important person and she was just a girl.

QUESTION: Which photograph is your favorite shot from this group?

ANSWER: My favorite photograph is the one of Marilyn Monroe and Warren. It brings back many good memories. That is all I have now, memories. My friend Warren died only a few years after Marilyn. Two young people who are both gone now.

QUESTION: Do you think that Marilyn Monroe could have been murdered?

ANSWER: Yes, but I am not sure.

QUESTION: There is a photograph of an unidentified man by himself. Who is he, and why is his photograph in the middle of all the Marilyn shots?

ANSWER: He was my assistant, and Ms. Monroe said she could be a photographer too. She jumped up and ran to my camera

and photographed my assistant, it was very funny.

QUESTION: Did you make a lot of money from the photographs?

ANSWER: No, it was an honor to photograph Ms. Monroe, and I gave the negatives to my friend Warren as a thank you. Ms. Monroe also signed one of the photographs for me, which I still have.

QUESTION: Who is your favorite photographer?

ANSWER: I like Edward Steichen.

QUESTION: How did you get interested in photography?

ANSWER: My father gave me a camera when I was 10 years old, and I really liked it. After school, I decided to do what I really liked, which was photography. But my parents wanted me to become a doctor and photography is not a very prestigious job in Japan. I moved to the United States because of my girlfriend and became a fashion photographer in New York City. I think photography is an art if you do it correctly.

QUESTION: Is Marilyn Monroe as popular in Japan as she is in the United States?

ANSWER: Yes, very much. Maybe even more in Japan.

QUESTION: Do you have a favorite Marilyn

Monroe movie?

ANSWER: Some Like it Hot.

Thank you very much for taking the time to  
answer our questions.





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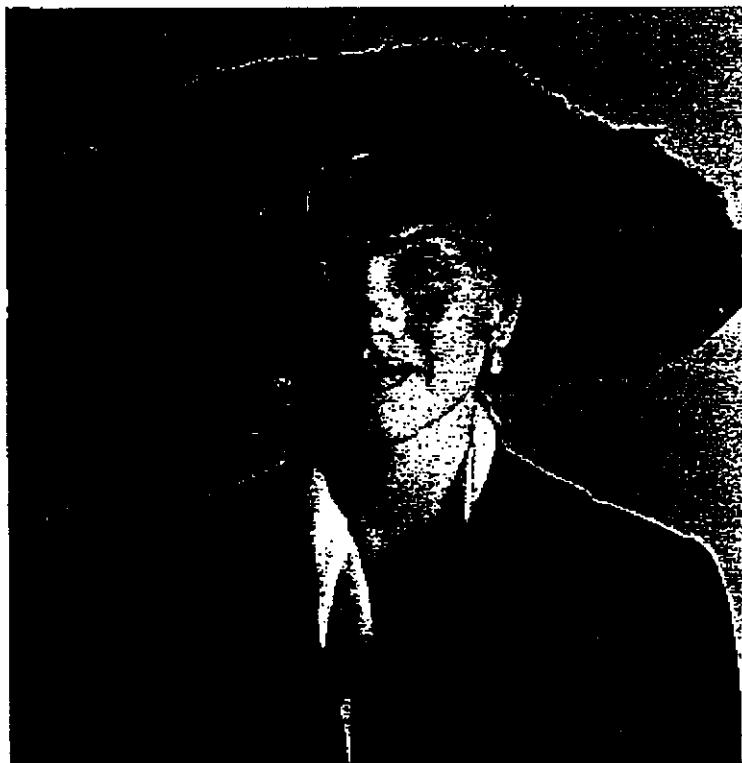
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Even years after her death, Marilyn Monroe continues to bring joy to the hearts of millions of her fans and admirers around the world. From her humble beginnings to her untimely death, she maintained a royal poise and dignity that was unsurpassed. She was warm, funny, intelligent and most importantly, a compassionate human being. We hope that these wonderful photographs have in some small way helped to memorialize the image of Marilyn Monroe at her best.